IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGICAL CIVIL JURISDICTION.

WRIT PETITION NO. 917 OF 2003

Indian Oil Corporation Ltd.)
A company incorporated by and under)
the provision of the Companies)
Act, 1956, having its registered)
office at G-9, Ali Yavur Jung Marg,)
Bandra (E),Mumbai 400 051) ....Petitioners

versus

1. State of Maharashtra)
through its Secretary,)
Ministry of Revenue,)
having its office at)
Mantralaya, Nariman Point,)
Mumbai 400 021.)
)
2. The Collector of Mumbai Distict,)
having its office at Old Custom)
House , Sai Bhagat Singh Marg,)
Mumbai 400 001.)
)
3. Maharashtra Tourism Development)
Corporation Limited, through its)
Managing Director having its)
office at Express Towers,)
9th floor, Nariman Point,.)
Mumbai 400 021.)...Respondents

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Mr. Shyam Diwan with Mr. Santosh Pawar i/b. Bhave & Co.
for the petitioner.
Mr. Pradeep Jadhav AGP for Respondents 1 and 2.
Mr. S.P. Bharati for Respondent no.3.

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CORAM ; F.I. REBELLO, J.

DATED; 14TH DECEMBER, 2004.

ORAL JUDGMENT;

1. The respondent no.1 State is the owner of a plot of land being plot no. 100 A and B of Block B situated at

Marine Drive. Respondent no.3 is a corporation wholly owned by respondent no.1. Respondent no.3 requested respondent no.1 to hand over the plot to respondent no.3 for the purpose of service and maintenance station and for utilising the same for repairs and maintenance of its fleet of buses. The respondent no.1 directed the respondent no.2 Collector by letter dated 21-10-1989 to hand over the said land to respondent no.3 on lease for 30 years. The respondent no.2 came to issue an order to hand over the property on lease to respondent no.3 on 16-4-1999. The respondent no.3 initially gave possession of land to HPCL for running petrol pump on contract basis. after fixing the land cost at Rs. 1,42,00,000/-. By letter of 3-11-1990 the respondent no.1 wrote to respondent no.3 to cancel the agreement with HPCL and to return the amount of Rs. 1,42,00,000/- as it was theGovernment's desire that Respondent no.3 should enter into an agreement with the petitioners herein, for running a petrol pump on the same terms and conditions which were given to HPCL. Pursuant to that the respondent no.3 addressed to the petitioners a letteron 29-11-1990 setting out the conditions under which possession has been handed over. It was also mentioned that final agreement would be prepared in due couurse after the lease agreement with the Government is finalised. Petitioners paid the

amount i.e. a sum of Rs. 1,42,00,000/- to respondent no.3. The collector thereafter made a further demand on respondent no.3 for the value of the construction which respondent no.3 called on the petitioners to pay, which was paid by the petitioner to respondent no.3.

2. Though the amount had been paid by the petitioner to respondent no.3, it appears that respondent no.3 did not pay the said amount to respondent no.1, pursuant to which a show cause notice was issued to respondent no.3. A letter thereafter came to be addressed by the managing director of respondent no.3 to the Principal Secretary, Revenue of the respondent no.1 setting out various contentions and intimating that respondent no.3 had handed over the petrol pump to the petitioner and this had been conveyed to the Principal Secretary, Revenue and other Secretaries as set out in the letter. A request was also made that the collector should not act until the proposal put by respondent no.3 was considered by respondent no.1.

3. By letter dated 26-11-1999 the respondent no.2 passed an order for taking possession and further directed that respondent no.3 should hand over the possession to the representatives set out therein. A letter thereafter came to be addressed on behalf of the

respondent no.3 to the Collector wherein it was pointed out that the matter has been discussed with respondent no.1 and as such respondent no.3 should not proceed to take action in terms of the order. Principal Secretary of the respondent no.1 addressed a letter to the Secretary to the Deputy Chief Minister dated 11-8-2000 setting out therein that the file was being examined and in the meantime the Principal Secretary should issue a stay order to save respondent no.3 from embarassment. BY a letter dated 17-8-2000 the petitioner wrote to Respondent no.2, pointing out that they had learnt that proceedings had been initiated for attaching the land which was subleased to the petitioner and pointing out that they had made full payment and therefore requested respondent no.2 to reconsider the matter and issue suitable directions.

In the meantime the additional Secretary Revenue and

Forest wrote to respondent no.2 that vide memo dated 5-10-1999 that a proposal had been submitted to give the land to the petitioners as per the prevailing rules. Respondent no.2 called for a metting with respondent no.3 and also petitioner by letter dated 5-12-2001. The respondent no.3 also addressed a letter to the Chief Secretary, Tourism, setting out therein that a proposal has been submitted to Revenue and

Forest Department to pass appropriate orders.

4. By letter of 15-12-2003 respondent no.2 intimated to the petitioners that as respondent no.3 had failed to make payment and considering section 267 of the M.L.R.Code 1966 the amount of land revenue is recoverable from the superior holder or the person in possession. A warrant of attachment was issued. As the attachment had taken place by letter dated 16-2-2003 the petitioner asked respondent no.2 to issue directions to stop the sale. On failure the petitioner moved this court when ad-interim relief was granted.

The same was confirmed by order dated 9-6-2003.

5. This is an unfortunate case which has come to the court considering that the petitioner is an undertaking of the Government of India. Respondent no.3 is an undertaking of respondent no.1 and admittedly respondent no. 1 had taken a decision to give land initially to respondent no.3 for a period of 30 years. Respondent no.1 had also issued directions to the respondent no.3 to give the land to the petitioner for running a petrol pump. The petitioner has paid over to respondent no.3 the entire amount which was demanded by respondent no.1 to respondent no. 3. It is the respondent no.3 who has now to make payment of the said

amount to respondents 1 and 2. The petitioner cannot be faulted for the failure of respondent no.3, an undertaking of respondent no. 1 to pay the money received from the land from the petitioners herein. The respondent no.2 in due circumstances ought not to have issued the warrant of attachment considering the correspondence being exchanged and apart from that the direction by the Government to respondent no.2 to put up a proposal to give the land to the petitioner as per the prevailing rules.

6. Considering the above, to my mind, without going into the issue of legality or otherwise of the impugned order and considering the matter, it would be in the fitness of things if this petition is disposed of by issuing the following directions.

a) Respondent no.2 is directed to withdraw forthwith the order of attachment dated 15-2-2003 Exh.Q to the petition.

b) The respondents herein considering the amount already paid by the petitioner herein to respondent no.3 to take a decision on the proposal initially put up by the Revenue and Forest department to the Collector to give the land to the petitioner as per

prevailing rules in terms of the letter of 30-8-2000.

c) The respondents are directed not to take any steps for demanding any amount from the petitioner including by way of interest, as the petitioner has already paid the sum of Rs. 1,42,00,000/- unless any other amounts other than the amount and interest therein is legally due and payable.

d) After the decision of the respondent, if that be adverse to the petitioners, the respondents are directed not to take any action for a period of 16 weeks from the decision.

e) Considering as set out earlier that these are Government undertakings, the disputes, be in the first instance, will be attempted to be resolved by the Principal Secretary of Respondent no.1 before issuing any order.

Rule made absolute accordingly.

No order as to costs.

7. On behalf of the petitioner their learned counsel submits that steps will be taken to withdraw the Contempt Petition (L) No.17/2004. Statement accepted.

Parties to act on an authenticated copy of this order.

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